

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In Re)	
)	
JOHN HARRISON WELLFORD, III)	Case No. 2:19-bk-20135
)	Chapter 13
Debtor.)	
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WEST VIRGINIA WATER DEVELOPMENT)	
AUTHORITY, acting on behalf of the)	
WEST VIRGINIA INFRASTRUCTURE)	
AND JOBS DEVELOPMENT COUNCIL,)	
And)	
REGIONAL DEVELOPMENT AUTHORITY)	
OF CHARLESTON-KANAWHA COUNTY,)	
WEST VIRGINIA METROPOLITAN)	
REGION)	
)	
Plaintiffs,)	
)	
v.)	Adversary Proceeding No. _____
)	
JOHN H. WELLFORD, III, aka)	
JOHN H. WELLFORD,)	
)	
Defendant.)	
)	

**COMPLAINT UNDER 11 U.S.C. § 523 FOR JUDGMENT AND FOR
DETERMINATION OF DISCHARGEABILITY OF DEBTS**

This is a Complaint to obtain a determination that the debts of debtor John H. Wellford, III (the “Debtor” or “Wellford”) to plaintiffs West Virginia Water Development Authority (“WVWDA”), acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the “Infrastructure Council”),¹ and Regional Development Authority of Charleston-Kanawha County, West Virginia Metropolitan Region (“RDA” and, with WVWDA, the “Plaintiffs”) are non-dischargeable under 11 U.S.C. §§ 523 because they were obtained by and

¹ References to WVWDA hereinafter shall be inferred to mean WVWDA on behalf of the Infrastructure Council.

result from (i) false pretenses, false representation(s), and/or actual fraud pursuant to § 523(a)(2), (ii) embezzlement pursuant to § 523(a)(4), and/or (iii) willful and malicious injuries perpetrated on the Plaintiffs by Wellford pursuant to § 523(a)(6).

Plaintiffs seek a determination that Wellford's debt to WVWDA and RDA described below is excepted from the Debtor's discharge pursuant to 11 U.S.C. §§ 523(a) and 1141,² Rules 4007 and 7001(6) of the Federal Rules of Bankruptcy Procedure, and respectfully state and allege as follows:

THE PARTIES

1. WVWDA is a governmental instrumentality and body corporate of the State of West Virginia acting by and on behalf of the Infrastructure Council, with its principal place of business in Charleston, West Virginia.

2. RDA is a West Virginia public corporation with its principal place of business in Charleston, West Virginia.

3. Wellford is an individual residing in Charleston, West Virginia and is a debtor before this Court. While Wellford's case is pending under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code"), a motion has been recently filed by the Debtor to convert the case to one under Chapter 11.

JURISDICTION AND VENUE

4. This is a civil proceeding arising in and under a bankruptcy case pending before the United States Bankruptcy Court for the Southern District of West Virginia (the "Court").

5. This Court has subject matter jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(I) and (J).

² Based on the Debtor's recent motion to convert the case to Chapter 11, this section applies instead of 11 U.S.C. § 1328(b).

6. Moreover, the Court has exclusive jurisdiction over this case since it involves dischargeability determinations under 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6). *See* 4 Resnik, Alan N. & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 523.03 (16th ed. 2009) (citing 1983 Advisory Committee Note to Fed. R. Bankr. P. 4007).

FACTUAL BACKGROUND

7. The factual basis for this action is set forth below and in the pleadings of record filed in the Circuit Court of Kanawha County, West Virginia, in (1) *West Virginia Water Development Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council v. John H. Wellford, III, aka, John H. Wellford*, Civil Action No. 18-C-1564 (the “WVWDA State Court Case”), which was filed by WVWDA on or about December 28, 2018, and (2) *Regional Development Authority of Charleston-Kanawha County, West Virginia Metropolitan Region v. Corotoman, Inc., and John H. Wellford, III, individually*, Civil Action No. 18-C-1565 (the “RDA State Court Case”), which was also filed on or about December 28, 2018.

8. The initial pleadings filed in the WVWDA State Court Case are attached as **Exhibit A**, and the initial pleadings filed in the RDA State Court Case are attached as **Exhibit B**.

9. The Debtor’s bankruptcy case, filed on March 29, 2018, stayed both the WVWDA State Court Case and the RDA State Court Case before a judgment could be reached.

10. Wellford and Corotoman entered into an agreement in which RDA agreed to hold title to the parcel of land at Lot E-1 situated in NorthGate, City of Charleston, Kanawha County, West Virginia (the “Premises”) and permitted the same to be used by Ticketmaster as a means of providing an economic development incentive through the deferment of real property taxes. RDA entered into this agreement because Wellford and Corotoman ultimately agreed to

reimburse the foregone real estate taxes upon conclusion of the Commercial Lease Term with Ticketmaster.

11. On or about May 13, 1999, First Community Bank ("Bank") committed to loan RDA Four Hundred Ten Thousand Dollars (\$410,000.00) for the purchase of the Premises.

12. Pursuant to W.Va. Code § 31-15A-1, *et. seq.*, WVWDA loaned the principal amount of Three Million Dollars (\$3,000,000.00) to RDA pursuant to a Loan Agreement dated August 5, 1999, attached as **Exhibit C**, and a Promissory Note ("Note"), attached as **Exhibit D**.

13. RDA used this Three Million Dollars (\$3,000,000.00) to purchase a built-to-suit 23,055 square foot building ("Building") at the NorthGate Business Park from Corotoman, Inc. ("Corotoman"), a West Virginia corporation solely owned and controlled by Wellford.

14. The Building was constructed by Corotoman and leased to Ticketmaster, LLC ("Ticketmaster") on January 14, 1999 (the "Lease").

15. RDA purchased the Building from Corotoman by that Real Estate Purchase Agreement Containing Reservations and Covenants dated July 23, 1999, by and between Corotoman, RDA, and Wellford, attached hereto as **Exhibit E** ("Purchase Agreement"). Pursuant to the Purchase Agreement, on or about August 5, 1999, Corotoman executed a deed transferring title to the Premises to RDA. On or about August 5, 1999, Corotoman executed an Assignment of Lease, in which Corotoman assigned the Lease to RDA. Further, on or about August 5, 1999, RDA executed an assignment of Rents and Leases to WVWDA.

16. RDA paid Corotoman the sum of Three Million Eight Hundred Ten Thousand Dollars (\$3,810,000.00) as the purchase price for the Building, comprised of (i) Four Hundred Thousand Dollars (\$400,000.00), which was contributed by the City of Charleston in its adoption of Resolution No. 038-98 and was to be recouped from B&O Taxes to be paid by Ticketmaster;

(ii) Four Hundred Ten Thousand Dollars (\$410,000.00), which were the proceeds of a loan to RDA from First Community Bank, N.A.; and (iii) Three Million Dollars (\$3,000,000.00), which were the proceeds of the loan from WVWDA to RDA, described above.

17. Wellford and Corotoman were “authorized and directed to, and shall, perform all of the obligations of RDA under the Loan Agreements ... by and between RDA and WVWDA, and RDA and the Bank, in connection with the Long Term Loans³.” *See* Exhibit E at 4, ¶ 7. Wellford and Corotoman were also “authorized and directed to, and shall, keep and maintain all of the covenants of RDA under each of the Deeds of Trust ... and Assignments of Rents and Leases ... executed in favor of WVWDA and the Bank in connection with the Long Term Loans.” *See id.*

18. The Purchase Agreement provided that Corotoman would continue to “strictly and timely perform all obligations of the Landlord in the Lease, and to pay all amounts payable by Landlord under the Lease....” *See id.* at 3–4, ¶ 6.

19. Wellford also caused Corotoman to agree to promptly pay and perform all obligations on behalf of RDA on RDA’s loans from WVWDA and First Community Bank. *See Id.* at 4, ¶ 7. Furthermore, the obligations Wellford and Corotoman agreed to perform under the Purchase Agreement included the collection of rent from Ticketmaster. *See id.* at 3, ¶ 6.

20. In accordance with the Purchase Agreement, Wellford and Corotoman collected rent from Ticketmaster.

21. Wellford, as the 100% owner and sole employee and agent of Corotoman, unconditionally “personally guarantee[d] and adopt[ed] directly, jointly and severally as his own

³ “Long Term Loans” is defined in the Purchase Agreement as the Note from WVWDA to RDA and the loan to RDA from First Community Bank.

personal obligation, the obligations and duties of Corotoman [in the Purchase Agreement].”

See id. at p. 8, ¶ 12 (emphasis added).

22. Wellford executed that Guaranty Agreement attached hereto as **Exhibit F** on August 5, 1999 (“Guaranty”), in which he unconditionally guaranteed

as primary obligor and not merely as surety. . . to the Lender [(WVWDA)] (i) the due and punctual payment of all present and future indebtedness evidenced by or arising out of the Agreement and any note issued by the Borrower [(RDA)] thereunder (whether one or more, the ‘Note’), including, but not limited to, the due and punctual payment of principal of and interest on that certain Promissory Note of the Borrower payable to the order of the Lender dated August 5, 1999, in the principal amount of \$3,000,000, together with all renewals, extensions or modification thereof, and the due and punctual payment of all other fees or other charges now or hereafter owed by the Borrower under the Agreement, the Note and the Lease, as and when the same shall become due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Agreement, the Note and the Lease, and all losses, costs, expenses and attorneys’ fees incurred by reason of a default under the Agreement, the Note, the Lease or hereunder. In case of failure by the Borrower punctually to pay any amounts due under the Agreement, the Note or the Lease, Guarantor hereby unconditionally agrees to cause such payment to be made punctually as and when the same shall become due and payable, whether at maturity or by acceleration or otherwise, and as if such payment were made by the Borrower.

See Exhibit F at p. 3, ¶ 2 (emphasis added).

23. The Note is in default and arrears. The default and arrearage arose as a result of Wellford and Corotoman’s failure to pay to WVWDA money that they collected, on behalf of RDA pursuant to the Purchase Agreement, from Ticketmaster in the amount of approximately One Million Five Hundred Sixty Thousand Dollars (\$1,560,000.00) (the “Rental Funds”), which money belonged to the RDA and which was required to be paid to WVWDA pursuant to the Note.

24. Instead of paying the Rental Funds to WVWDA, Wellford used or caused these Rental Funds to be used for other purposes without authority or justification.

25. Pursuant to the terms of the Note, WVWDA elected to declare all sums owing under the Note immediately due and payable.

26. Wellford is obligated pursuant to the Guaranty to pay the entirety of the accelerated indebtedness outstanding on the Note.

27. Wellford is also obligated to pay WVWDA “any costs or expenses [incurred] in protecting or enforcing its rights under the [Loan] Agreement, the Note, the Lease or [the] Guaranty, including but not limited to reasonable attorneys’ fees and the costs and expenses of litigation. . . .” *See id.* at p. 8, ¶ 4.

28. Wellford has not paid the amounts due and owing under the Note and, therefore, is in default of the Guaranty.⁴

29. WVWDA and RDA jointly and severally hold the claims that are stated in the following counts against Wellford.

COUNT I

(11 U.S.C. § 523(a)(2)) -- Debt Non-dischargeable Due to Wellford’s False Pretenses, False Representation, and/or Actual Fraud)

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. Section 523(a)(2) of the Bankruptcy Code provides in relevant part that “[a] discharge under section. . . 1141. . . of this title does not discharge an individual debtor from any debt—. . . for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition[.]” *See* 11 U.S.C. § 523(a)(2).

⁴ As of the March 29, 2019 petition date (the “Petition Date”), Wellford owed WVWDA \$2,021,097.35. To the extent this amount is not dischargeable, interest will continue to accrue until paid. *See* Case No. 19-bk-20135, Claim No. 3 at pp. 5–6 (providing an itemized calculation of this amount). WVWDA is also entitled to recover attorneys’ fees that continue to accrue after May 31, 2019. *See id.*

32. Wellford, as an experienced businessman, caused Corotoman to enter into the transactions described above, through which Corotoman (1) obtained money from RDA, including the \$3,000,000 loaned by WVWDA, in purchase of the Building and (2) assumed the role of landlord on behalf of RDA, including the obligations to collect rent from Ticketmaster and use those funds to pay RDA's debts to WVWDA and First Community Bank.

33. Wellford not only caused Corotoman to promise to fulfill the obligations of RDA as landlord, but Wellford personally guaranteed payment and performance of all obligations required under the Purchase Agreement.

34. Wellford intentionally breached these obligations by collecting over \$1.5 million in Rental Funds from Ticketmaster and then using them for his own purposes instead of fulfilling RDA's loan obligations to WVWDA and First Community Bank. Wellford has also failed to perform on his Guaranty.

Actual Fraud

35. These acts by Wellford constitute actual fraud.

36. As explained in Collier on Bankruptcy,

Actual fraud consists of any deceit, artifice, trick or design involving direct and active operation of the mind, used to circumvent and cheat another—something said, done or omitted with the design of perpetrating what is known to be a cheat or deception.

4 Resnik, Alan N. & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 523.08[1][e] (16th ed. 2009) (citing *RecoverEdge L.P. v. Pentecost*, 44 F.3d 1284 (5th Cir. 1995); *Citibank (S.D.), N.A. v. Eashai (In re Eshai)*, 87 F.3d 1082 (9th Cir. 1992); see *McClellan v. Cantrell*, 217 F.3d 89- (7th Cir. 2000)).

37. Under West Virginia law, the elements of "actual fraud" are as follows:

(1) that the act claimed to be fraudulent was the act of the defendant or induced by him; (2) that it was material and false; that plaintiff relied upon it and was

justified under the circumstances in relying upon it; and (3) that he was damaged because he relied on it.

Syl. Pt. 2, *Horton v. Prof'l Bureau of Collections of Md., Inc.*, 238 W. Va. 310, 794 S.E.2d 395 (2016).

38. Actual fraud is present under West Virginia law because (1) Wellford induced WVWDA and RDA into transactions and contractual relationships (*i.e.*, the Purchase Agreement and Guaranty) wherein he promised to collect rent from Ticketmaster and pay it to WVWDA, (2) RDA and WVWDA reasonably relied upon those representations, and (3) RDA and WVWDA were materially damaged when Wellford used the Rental Funds for his own purposes instead of using it to pay down the Note.

False Representations

39. The debt is also not dischargeable under section 523(a)(2)(A) because Wellford obtained money by false representations.

40. To prevail in a case under 11 U.S.C. § 523(a)(2)(A) where a debtor obtained money by false representation, a plaintiff must demonstrate that the debtor: (1) made a false representation; (2) knew that the representation was false; (3) intended to deceive; (4) produced the victim's justifiable reliance on the representation; and (5) proximately caused the damage. *See Brannon v. Reynolds (In re Reynolds)*, 543 B.R. 235, 242 (Bankr. S.D.W. Va. 2015) (citing *SG Homes Assocs., LP v. Marinucci*, 718 F.3d 327, 334 (4th Cir. 2013); *Boyuka v. White (In re White)*, 128 Fed.Appx. 994, 998 (4th Cir. 2005) (internal citations omitted)).

41. "Under § 523(a)(2)(1), 'the false representations giving rise to the debt must have been knowingly and fraudulently made,' or, in other words, they must have involved moral turpitude or intentional wrong." *See id.* (citing 4 Alan N. Resnik & Henry J. Sommer, COLLIER

ON BANKRUPTCY ¶ 523.08[d] (16th ed. 2009); *In re Reeher*, 514 B.R. 136, 159 (Bankr. D. Md. 2014) (internal quotations and citations omitted)).

42. Upon information and belief, Wellford made false representations to WVWDA and RDA of his intention to perform under the Purchase Agreement and Guaranty in order to obtain these funds that belonged to RDA and were to be paid to WVWDA.

43. Upon information and belief, Wellford's misrepresentations to WVWDA and RDA were made with the purpose and intent of deceiving them into believing that Wellford would fulfill the obligations to RDA and WVWDA under the Purchase Agreement and the Guarantee.

44. A misrepresentation by a debtor can be inferred from the fact that the debtor failed to take steps to comply with the promise to undertake contractual duties. *See, e.g., In re Barnette*, 281 B.R. 869 (Bankr. W.D. Pa. 2002) (intent to deceive inferred from the debtor's failure to perform under a contract). Accordingly, Wellford's intent to deceive RDA and WVWDA can be inferred from his material failure to perform as promised under the Purchase Agreement, instead keeping the Rental Funds for his own purposes.

45. WVWDA and RDA reasonably relied upon Wellford's representations that Corotoman and Wellford personally would perform in conformity with the terms of the Purchase Agreement and the Guarantee.

46. WVWDA and RDA were damaged by their reasonable reliance upon the representations of Wellford because Wellford used and consumed the Rental Funds instead of providing them to WVWDA in payment of RDA's loan obligations under the Note.

47. The total amount of Plaintiffs' damages caused by Wellford's false pretenses, fraudulent representations and/or actual fraud constitutes a non-dischargeable debt under 11 U.S.C. § 523(a)(2)(A).

COUNT II

(11 U.S.C. § 523(a)(4) -- Debt Non-dischargeable Due to Wellford's Embezzlement)

48. Paragraphs 1 through 47 are incorporated herein by reference.

49. Section 523(a)(4) of the Bankruptcy Code provides in relevant part that "[a] discharge under section. . . 1141. . . of this title does not discharge an individual debtor from any debt—for. . . embezzlement . . . [.]” *See* 11 U.S.C. § 523(a)(4).

50. “Under § 523(a)(4), embezzlement is the fraudulent appropriation of property by a person to whom such property has been entrusted, or into whose hands it has lawfully come.” *In re Reynolds*, 543 B.R. at 243 (citations omitted) (internal quotation marks omitted).⁵

51. “Some bankruptcy courts have held that, to demonstrate embezzlement, a plaintiff must show: 1) property owned by another which is rightfully in the possession of the defendant; 2) that the defendant appropriated the property for personal use; and 3) that the appropriation occurred with fraudulent intent or by deceit.” *Id.* (citation omitted).

52. Wellford, as the sole owner, controller, and employee of Corotoman, caused Corotoman to collect the Rental Funds on RDA's behalf pursuant to the Purchase Agreement and then impermissibly use them for his own purposes.

53. These Rental Funds belonged to the RDA and were required to be paid to WVVDA under the Purchase Agreement.

⁵ Embezzlement differs from larceny in the fact that the original taking of the property was lawful, or with the consent of the owner, while in larceny the felonious intent must have existed at the time of the taking. *See, e.g., Reynolds*, 543 B.R. at 243; 4 Resnik, Alan N. & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 523.10[2] (16th ed. 2009).

54. Wellford appropriated the Rental Funds for a use other than which he was permitted under the transaction documents.

55. Wellford was not lawfully entitled to use the Rental Funds for himself or his business, Corotoman.

56. Wellford did appropriate the Rental Funds, through Corotoman, for his own use and benefit.

57. In doing so, Wellford intended to permanently deprive Plaintiffs of the Rental Funds.

58. Wellford's conduct in appropriating the Rental Funds for his own without Plaintiffs' knowledge or consent demonstrates that his actions involved intentional wrongdoing or deceit.

59. The total amount of Plaintiffs' damages caused by Wellford's embezzlement constitutes a non-dischargeable debt under 11 U.S.C. § 523(a)(4).

COUNT III

(11 U.S.C. § 523(a)(6)) -- Non-dischargeability Due to Willful and Malicious Injury by Wellford to the Property of the Plaintiffs)

60. Paragraphs 1 through 59 are incorporated herein by reference.

61. Section 523(a)(6) of the Bankruptcy Code provides in relevant part that “[a] discharge under section. . . 1141. . . of this title does not discharge an individual debtor from any debt—for willful and malicious injury by the debtor to another entity or to the property of another entity[.]” *See* 11 U.S.C. § 523(a)(6).

62. The term “entity” is defined broadly to include a person, estate, trust, and a governmental unit. *See* 11 U.S.C. § 101(15).

63. As this court has explained, “[t]he word ‘willful’ requires deliberate or intentional acts, while ‘malicious’ refers to acts that are ‘wrongful and without just cause or excessive even in the absence of personal hatred, spite, or ill will.’” *See, e.g., Aaron v. Lilly (In re Lilly)*, A.P. Case No. 17-ap-02002, 2018 WL 1514412 at *3 (Bankr. S.D.W. Va. 2018) (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S.Ct. 974, 140 L.E.2d 90 (1998); *Nestorio v. Assoc. Commer. Corp. (In re Nestorio)*, 250 B.R. 50, 57 (D. Md. 2000) (quoting *St. Paul Fire & Marine Ins. Co. v. Vaughn*, 779 F.2d 1003, 1008 (4th Cir. 1985); S. REP. NO. 95-989, at 79 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5865; H.R. REP. NO. 95-595, at 365 (1977) reprinted in 1978 U.S.C.C.A.N. 5963, 6320).

64. Wellford willfully and maliciously injured the Plaintiffs by his conversion of the Rental Funds. A debt arising from “willful and malicious injury” includes debts arising from a “willful and malicious conversion.” *See Quality Car and Truck Leasing, Inc. v. Adkins (In re Adkins)*, 567 B.R. 501, 508 (Bankr. S.D.W. Va. 2017) (explaining that “[g]enerally § 523(a)(6) applies to torts, but conversion can sometimes fall under § 523(a)(6)”), *reconsideration denied*, No. 2:14-AP-2082, 2017 WL 4127770 (Bankr. S.D.W. Va. Sept. 13, 2017); 4 Resnik, Alan N. & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 523.12 (16th ed. 2009) (citing to 124 Cong. Rec. H11,095-11,096 (daily ed. Sept. 28, 1978), *reprinted in* App. Pt. 4(f)(iii) *infra*; S17, 412–13 (DAILY ED. Oct. 6, 1978), *reprinted in* App. Pt. 4(f)(iii) *infra*).

65. The test for “willfulness” is “whether the debtor acted with substantial certainty [that] harm [would result] or [that there was] a subjective motive to cause harm.” *See Adkins*, 567 B.R. at 507 (citing *Parsons v. Parks (In re Parks)*, 91 Fed.Appx. 817, 819 (4th Cir. 2003)) (holding that the entire outstanding loan balance owed by the debtor to Quality Car is

nondischargeable where debtor sold collateral without Quality Car's permission and failed to turn over the proceeds to Quality Car).

66. This Court has defined "malice" as follows:

"Malice" may also be defined as "causing injury without just cause or excuse," *Id.*; *Craig*, 2016 WL 4082620 at *9, 2016 U.S. Dist. LEXIS 99822 at *25 (citing *Desert Palace*, 2015 WL 5785822 at *6, 2015 U.S. Dist. LEXIS 132580 at *16) or as being done "deliberately, intentionally, and with knowing disregard for [the] plaintiff's rights." *Reed v. Owens (In re Owens)*, 449 B.R. 239, 255 (Bankr. E.D. Va. 2011) (quoting *Johnson v. Davis (In re Davis)*, 262 B.R. 663, 670–71 (Bankr. E.D. Va. 2001)) (internal quotation marks omitted). Some courts have held that, in cases involving conversion of property, "malicious intent must be demonstrated by evidence that the debtor had knowledge of the creditor's rights and that, with that knowledge, proceeded to take action in violation of those rights." *Wooten*, 423 B.R. at 134 (quoting *In re Nelson*, 67 B.R. 491, 497 (Bankr. D. Minn. 1985)) (internal quotation marks omitted). That "knowledge" can be "inferred from the debtor's experience in the business, his concealment of the sale, or by his admission that he has read and understood the security agreement." *Id.* No specific "ill will" or "specific intent" against the creditor need be shown to prove malice. *Wooten*, 423 B.R. at 130 (citing *First Nat'l Bank v. Stanley (In re Stanley)*, 66 F.3d 664, 667 (4th Cir. 1995)).

Adkins, 567 B.R. at 508–09 (Bankr. S.D.W. Va. 2017) (emphasis added) (internal citations omitted).

67. Any movant under section 523(a)(6) for willful and malicious conversion must demonstrate three elements: "(1) the debtor caused an injury; (2) the debtor's action[s] were willful; and (3) that the debtor's actions were malicious." *See Adkins*, 567 B.R. at 508 (citing *Ocean Equity Group, Inc. v. Wooten (In re Wooten)*, 423 B.R. 108, 128 (Bankr. E.D. Va. 2010)).

68. Wellford is an experienced businessman and knew and understood the Plaintiffs' rights under the Purchase Agreement and Guarantee.

69. Wellford's collection and conversion of the Rental Funds was both intentional and willful, and was wholly without proper authorization or consent.

70. Wellford's conversion of the Rental Funds, which exceeded \$1.5 million, constitutes a malicious act because it was both wrongful and without just cause or excuse.

71. Wellford's malicious intent is evident in his knowledge of the Plaintiffs' rights and intentional acts in violation of those rights.

72. Wellford knew that his actions would cause injury to the Plaintiffs.

73. Wellford's actions described above caused injury to RDA and WVWDA in that WVWDA has not received the payments on the Note and both WVWDA and RDA have incurred costs to pursue payments from Wellford.

74. WVWDA and RDA seek compensatory damages, punitive damages, attorney costs, fees and expenses, and all other relief that may be deemed appropriate.

75. The total amount of Plaintiffs' damages caused by Wellford's willful and malicious actions constitutes a non-dischargeable debt under 11 U.S.C. § 523(a)(6).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that the Court grant and enter a judgment in their favor and against the Defendant/Debtor as follows:

(a) Judgment in favor of the Plaintiffs in the amount of \$2,021,097.35, plus punitive damages and post-petition attorney fees, post-petition costs and expenses, post-petition interest, and all other relief that may be deemed appropriate;

(b) Judgment that, pursuant to 11 U.S.C. § 523(a)(2)(A), the Plaintiffs' Judgment is nondischargeable because this debt was incurred as a result of Wellford's actual fraud, false pretenses, and/or fraudulent representations;

(c) Judgment that, pursuant to 11 U.S.C. § 523(a)(4), the Plaintiffs' Judgment is nondischargeable because this debt was incurred as a result of Wellford's embezzlement;

(d) Judgment that, pursuant to 11 U.S.C. § 523(a)(6), the Plaintiffs' Judgment is nondischargeable because this debt was incurred as a result of Wellford's willful and malicious actions that caused injury to Plaintiffs; and

(e) Granting such other and further relief as the Bankruptcy Court deems just, equitable, and proper.

Respectfully submitted,

**WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY ACTING ON BEHALF OF THE
WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL**

By Counsel

/s/ Elizabeth A. Amandus

Elizabeth A. Amandus (WV Bar No. 11062)
Ellen S. Cappellanti (WV Bar No. 627)
Thomas J. Hurney, Jr. (WV Bar No. 1833)
Vivian H. Basdekis (WV Bar No. 10587)
Valerie F. Price (WV Bar No. 13033)
Jackson Kelly PLLC
500 Lee Street, East, Suite 1600
Post Office Box 553
Charleston, West Virginia 25322
Phone: (304) 340-1000
Fax: (304) 340-1080
Email: eamandus@jacksonkelly.com
ecappellanti@jacksonkelly.com
thurney@jacksonkelly.com
vhbasdekis@jacksonkelly.com
valerie.price@jacksonkelly.com

**REGIONAL DEVELOPMENT AUTHORITY
OF CHARLESTON-KANAWHA COUNTY,
WEST VIRGINIA METROPOLITAN REGION**

By Counsel

/s/ Joseph T. Johns

Joseph T. Johns (WV Bar No. 12754)
Turner & Johns PLLC
Suite 200, 216 Brooks Street
Charleston, West Virginia 25301
Phone: (304) 720-2329
Fax: (304) 720-2311
Email: jjohns@turnerjohns.com